

LEGISLATIVE BILL 1045

Approved by the Governor April 15, 2004

Introduced by Smith, 48

AN ACT relating to the Nebraska Pure Food Act; to amend sections 81-2,239, 81-2,240, 81-2,267, and 81-2,270, Reissue Revised Statutes of Nebraska; to define a term; to provide for single event food vendors; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-2,239, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,239. Sections 81-2,239 to 81-2,292 and section 3 of this act and the provisions of the Food Code, the Food Salvage Code, and the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food adopted by reference in sections 81-2,257.01 to 81-2,259, shall be known and may be cited as the Nebraska Pure Food Act.

Sec. 2. Section 81-2,240, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,240. For purposes of the Nebraska Pure Food Act, unless the context otherwise requires, the definitions found in sections 81-2,241 to 81-2,254.01 and section 3 of this act shall be used. In addition, the definitions found in the codes and practice adopted by reference in sections 81-2,257.01 to 81-2,259, shall be used.

Sec. 3. Single event food vendor shall mean a temporary food establishment that operates at no more than one event per calendar year for a period of no more than two days.

Sec. 4. Section 81-2,267, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,267. Prior to construction of, conversion to, or remodeling of a food establishment, food processing plant, or salvage operation, properly prepared plans and specifications for such construction, conversion, or remodeling shall be submitted to the regulatory authority for review and approval. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, type and model of proposed fixed equipment and facilities, and description of the type of food to be served or sold. The regulatory authority shall treat such plans and specifications as confidential or trade secret information and shall approve the plans and specifications if they meet the requirements of the Nebraska Pure Food Act. No food establishment, food processing plant, or salvage operation shall be constructed, converted, or remodeled except in accordance with plans and specifications approved by the regulatory authority. This section does not apply to food establishments which are temporary food establishments.

Sec. 5. Section 81-2,270, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,270. (1) No person shall operate: (a) A food establishment; (b) a food processing plant; or (c) a salvage operation, without a valid permit which sets forth the types of operation occurring within the establishment.

(2) Application for a permit shall be made to the director on forms prescribed and furnished by the department. Such application shall include the applicant's full name and mailing address, the names and addresses of any partners, members, or corporate officers, the name and address of the person authorized by the applicant to receive the notices and orders of the department as provided in the Nebraska Pure Food Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location and type of proposed establishment or operation, and the signature of the applicant. Application for a permit shall be made prior to the operation of a food establishment, food processing plant, or salvage operation. The application shall be accompanied by an initial permit fee and an initial inspection fee in the same amount as the annual inspection fee if inspections are required to be done by the department. If the food establishment, food processing plant, or salvage operation has been in operation prior to applying for a permit, the applicant shall pay an additional fee of ~~fifty dollars through June 30, 2003, and sixty dollars. on and after July 1, 2003.~~

(3) Payment of the initial permit fee, the initial inspection fee,

and the fee for failing to apply for a permit prior to operation shall not preclude payment of the annual inspection fees due on August 1 of each year. Except as provided in subsections ~~(8) through (11)~~ (7) through (10) of this section and subsection (1) of section 81-2,281, a permit holder shall pay annual inspection fees on or before August 1 of each year.

~~(4) Through June 30, 2003, the initial permit fee shall be fifty dollars and the annual inspection fee shall be as follows:~~

~~(a) A convenience store, licensed beverage establishment, limited food service establishment, and temporary food establishment, fifty dollars plus twenty-five dollars for each separate and distinct food preparation area within the establishment other than the first such area;~~

~~(b) A mobile food unit, twenty-five dollars per food unit. If the mobile food unit is supplied by a commissary this fee is in addition to the inspection fee due for the commissary;~~

~~(c) A pushcart, ten dollars per pushcart. If the pushcart is supplied by a commissary this fee is in addition to the inspection fee due for the commissary;~~

~~(d) One to ten vending machines, ten dollars; eleven to twenty vending machines, twenty dollars; twenty-one to thirty vending machines, thirty dollars; thirty-one to forty vending machines, forty dollars; and over forty vending machines, fifty dollars. Only vending machines which are not limited food vending machines shall be included in the number of vending machines upon which the fee is determined. If the vending machines are supplied by a commissary this fee is in addition to the inspection fee due for the commissary; and~~

~~(e) A food processing plant, a salvage operation, and any other food establishment, including a commissary, seventy dollars plus twenty-five dollars for each separate and distinct food preparation area within the establishment other than the first such area.~~

~~(5) On and after July 1, 2003:~~

~~(a) (4) (a) The director shall set the initial permit fee and the annual inspection fees on or before July 1 of each fiscal year to meet the criteria in this subsection. The director may raise or lower the fees each year, but the fees shall not exceed the maximum fees listed in subdivision ~~(5) (b)~~ (4) (b) of this section. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balance as follows:~~

~~(i) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Nebraska Pure Food Act;~~

~~(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act; and~~

~~(iii) All fee increases or decreases shall be equally distributed between all categories; and~~

~~(b) The maximum fees are:~~

Food Handling Activity	Initial Permit Fee	First Food Preparation Area		Additional Food Preparation Area		Unit Or Units Annual Inspection Fee
		Annual Inspection Fee	Annual Inspection Fee	Annual Inspection Fee (per area)	Annual Inspection Fee	
Convenience Store	\$61.72	\$61.72		\$30.86		N/A
Licensed Beverage Establishment	\$61.72	\$61.72		\$30.86		N/A
Limited Food Service Establishment	\$61.72	\$61.72		\$30.86		N/A
Temporary Food Establishment	\$61.72	\$61.72		\$30.86		N/A
Mobile Food Unit (for each unit)	\$61.72	N/A		N/A		\$30.86
Pushcart (for each unit)	\$61.72	N/A		N/A		\$12.34
Vending Machine Operations:	\$61.72					
One to ten units		N/A		N/A		\$12.34
Eleven to twenty units		N/A		N/A		\$24.68
Twenty-one to thirty units		N/A		N/A		\$37.02
Thirty-one to forty units		N/A		N/A		\$49.36
Over forty units		N/A		N/A		\$61.70
Food Processing Plant	\$61.72	\$86.40		\$30.86		N/A
Salvage Operation	\$61.72	\$86.40		\$30.86		N/A

Commissary	\$61.72	\$86.40	\$30.86	N/A
All Other Food				
Establishments	\$61.72	\$86.40	\$30.86	N/A

~~(5) (6) Through June 30, 2003, if an establishment is engaged in more than one food handling activity listed in subsection (4) of this section, the inspection fee charged shall be based upon the primary activity conducted within the establishment as determined by the department. On and after July 1, 2003, if an~~ If a food establishment is engaged in more than one food handling activity listed in subsection ~~(5)~~ (4) of this section, the inspection fee charged shall be based upon the primary activity conducted within the food establishment as determined by the department and any fees assessed for each additional food preparation area within the primary establishment as determined by the department.

~~(7) (6)~~ The department may impose a penalty for an inspection fee which is more than one month delinquent. The penalty may not exceed fifty percent of the fee for the first month of delinquency and one hundred percent of the fee for the second month of delinquency.

~~(8) (7)~~ An educational institution, health care facility, nursing home, or governmental organization operating any type of food establishment, other than a mobile food unit or pushcart, is exempt from the requirements in subsections (1) through ~~(7)~~ (6) of this section.

~~(9) (8)~~ A person whose primary food-related business activity is determined by the department to be egg handling within the meaning of the Nebraska Graded Egg Act and who is validly licensed and paying fees pursuant to such act is exempt from the permit and inspection fee requirements of the Nebraska Pure Food Act.

~~(10) (9)~~ A person holding a permit or license and regulated under the Nebraska Manufacturing Milk Act or the Nebraska Pasteurized Milk Law and an egg handler licensed and regulated under the Nebraska Graded Egg Act are exempt from the Nebraska Pure Food Act.

~~(11) (10)~~ A single event food vendor or a religious, charitable, or fraternal organization operating any type of temporary food establishment, mobile food unit, or pushcart is exempt from the requirements of subsections (1) through (7) (6) of this section. Any such organization operating any nontemporary food establishment prior to July 1, 1985, is exempt from the requirements of subsection (2) of this section.

Sec. 6. Original sections 81-2,239, 81-2,240, 81-2,267, and 81-2,270, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 7. Since an emergency exists, this act takes effect when passed and approved according to law.